

**Client Alert**  
**Professional Immigration News**  
**21 November 2016**

**The implementation of the law of 7 March 2016 on the rights of foreigners in France**  
**Circulars of 2 November 2016 - Provisions applicable as of 1 November 2016 and 1 January 2017**

**Summary:** The Law on the Rights of Foreigners in France of 7 March 2016 and the decrees and orders of 28 October 2016 established the legislative and regulatory framework for the new procedures for professional immigration, specifying in particular the new procedures and the lists of documents to be provided. The circulars of 2 November 2016 provide details on the priority orientations which should guide the administration in the application of these texts.

**I - Exemption from work permits for stays of less than or equal to three months for third-country nationals who are engaged in paid employment (Ministry of the Interior Circular of 2 November 2016) Decree No. 2016-1461 of 28 October 2016:**

<https://www.legifrance.gouv.fr/eli/decret/2016/10/28/INTV1609940D/jo>

The law of 7 March 2016 provides for the abolition of work permits for foreign employees who come to France to work for less than three months in areas determined by decree. The list of these fields of activities was fixed by decree of 28 October 2016 and codified in article D5221-2-1 of the Labor Code (see our Information Bulletin of 2 November 2016).

The circular of 2 November 2016 specifies that the exemption relates only to work authorization without further exempting the employer from its other social and tax obligations.

The exemption applies to an alien who is a national of a third country, who is in principle subject to a work permit and who comes to work as an employed person in the categories listed in the Decree, for a period which cannot exceed three months .

*Scope of exemption:*

For each category of activity, the scope of the exemption is specified, i.e. which employees are in fact exempted from work permits.

The burden will be on the employer to verify whether or not the wage-earning activity to be exercised is exempted from a work permit of less than three months.

Where the employer's field of activity or employment is subject to exemption, the work permit application need not be launched with the DIRECCTE. For employees who are nationals of countries subject to the Schengen visa requirement, the visa application must be accompanied by documents proving the exemption from work authorization.

In all cases, whether or not employees are subject to the Schengen visa requirement, the employer must provide the employee with the documents justifying the exemption. These documents are listed for each area of activity (e.g. for audit and expertise activities, in particular any document attesting that it is "an audit and verification assignment. As well as the letter of assignment or the addendum to the contract of employment specifying the nature, reason, duration of the posting and the conditions of employment and remuneration).

## **II - Measures for the reception, stay and work of foreigners for stays of more than 90 days**

The law of 7 March 2016 and its implementing decrees are intended to facilitate the stay of foreigners in France as well as the related administrative procedures, particularly with regard to work in France. This relaxation of procedures for compliant foreigners is accompanied by new verification procedures, in particular during the period of validity of the multi-annual cards.

### New cases of exemption from medical examinations

As from 1 November 2016, a number of foreign nationals will no longer have to submit a medical certificate issued by OFII in support of their application for a residence permit. This exemption concerns in particular:

- Applicants for the "Passport Talent" and "Family Passport" passes,
- Applicants for the "ICT detached employee" residence permit,
- Applicants for the internship card and trainee ICT,
- Students from 1 January 2017.

### Temporary Stay Permits (APS) for the purpose of exercising a first job or pursuing a professional activity

The provisional authorization of stay for foreign students is expanded and relaxed:

- Opening to more degrees: Initially intended for students who have at least a Master's degree, it is now also open to students holding a level I diploma certified by the conference of the grandes écoles or a diploma of Professional license.
- The APS scheme is open to students showing a business start-up project in a field corresponding to their training. At the end of the period of validity of the APS, the student will be able to obtain a residence card "entrepreneur / professional liberal" or "Passport Talent" labeled "entrepreneur" if he/she justifies fulfilling the conditions of issuance.
- The student holding an APS can obtain an "employee" or "temporary worker" residence card, but also a "Talent Passport" labeled "skilled employee / innovative company, CBE, researcher or performer".

The conditions in order to benefit from non-opposability of employment are maintained: employment or professional activity in connection with the training followed, respect of a threshold of remuneration of 1.5 times the SMIC which can however be adjustable according to the professional field concerned.

### Temporary residence permits (CST)

Temporary residence cards is distinguished from the multi-annual residence permit and the multi-year residence permit "Passeport Talent".

Temporary residence permits (CST) have a maximum validity of one year, except for the CST "temporary worker" when renewed.

↳ The "ICT trainee", "ICT family trainee", "ICT mobile trainee" and "ICT family mobile trainee" (article L313-7-2 of CESEDA).

- A VLS-TS "ICT trainee" may be granted to an employee who is not a citizen of the European Union, who is undertaking an internship within the framework of an internship agreement. The VLS-TS is issued for a duration corresponding to that of the internship within the limit of one year. The status of "ICT trainee" allows mobility of up to 90 days in another member state of the EU.

- The "ICT family trainee" residence card is issued to the spouse. This card gives right to the exercise of a professional activity.
- The "ICT mobile trainee" residence permit is issued to a foreign employee holding an "ICT trainee" card obtained in another EU Member State. It allows mobility of more than 90 days in intra group context. The spouse of the "ICT mobile trainee" receives a "mobile ICT trainee family" card entitling him/her to the exercise of a professional activity.

#### ▫ The temporary residence permit "employee" and "temporary worker" (article L313-10 CESEDA)

- The "employee" residence permit may be issued to a foreigner who has a contract of indefinite duration.
- The "Temporary worker" residence permit may be issued to a foreign national who has a fixed-term contract or is subject to the posting under Articles L1262-1 and L1262-2 of the Labor Code (own account, intra-group, in the framework of a service provision or within the framework of the interim).
- Employees on intra-group mobility who cannot benefit from either a "Talent Passport" or an "ICT detached" residence permit may be issued a "temporary worker" residence permit.
- The Temporary Residence Card (CST) cannot be renewed for a period exceeding one year, except for the CST "temporary worker", which can be renewed for the duration of the fixed-term contract or for the extension of the secondment.
- Students with a Master's degree, a level I diploma certified by the *Conférence de grandes écoles* or a diploma of professional degree, have access to the CST "temporary worker" or "employee" in the framework of change of status, without being subject to a labour market test, provided the job offered to them is consistent with the studies followed and that the proposed remuneration is at least 1.5 times the SMIC.

#### ▫ The temporary residence permit "entrepreneur / professional"

It merges the previous "merchant" and "professional" titles and may be issued to foreigners who wish to pursue a self-employed, commercial, craft, industrial or professional activity.

#### Multi-year residence cards (articles L313-17 to L313-24 of the CESEDA).

The new multi-annual residence card system comes into effect as from 1 November 2016. A distinction is made between the general multi-annual residence permit, the multi-annual residence card "Passport Talent" and "Family Talent Passport", the multi-year residence permit "Employee Seconded ICT" and "Employee Seconded ICT family" and the "Seasonal" multi-annual residence permit.

Multi-year residence cards can only be issued on first request (new arrivals) on presentation of a long stay visa.

#### ▫ General Multi-Year Residence Card

- The four-year general multi-year residence permit may be issued upon the expiry of a first residence permit of one year and provided that the following conditions are met:
  - Continued compliance with the initial conditions for issuance of the one-year residence permit.
  - Attendance of the training prescribed under the Republican Integration Contract (CIR).
  - Absence of rejection of the essential values of the Republic.
- Holders of a long-stay "Visitor", "Trainee" or "Temporary Worker" visa do not have access to the multi-annual residence card.
- The general multi-annual residence permit has a fixed duration:
  - Four years for holders of CSTs "Salaried" on permanent contracts or holders of CST "Contractor / Professional".
  - Two years for holders of a residence permit as spouses of French or parents of French children who have full access to the resident card after three years.
- The multi-year residence permit issued to foreign students has a duration adapted to the course of study followed. At the end of a first one-year student residence permit, a multi-year residence permit may be issued, the duration of which would correspond to the length of the course of study followed.

↳ Multi-year residence card "Passport Talent" (article L313-20 of the CESEDA).

The multi-year residence card "Passport<sup>1</sup> Talent" brings together under a single residence permit 10 categories of professional activities for which the stay and work in France ought to be facilitated. Its duration is in principle four years and it can be issued from the first admission to stay.

When issued for the exercise of an activity as an employed person, prior authorization to work is not required.

Family members can receive a "Family Passport" residence permit, the duration of which will be equal to that of the principal and with a right to work.

First application: If the foreign national resides outside of France, the decision to issue the title is taken by the diplomatic and consular authority and the residence permit is issued by the prefect of the residence of the foreign national on presentation of his/her passport bearing a long-stay "Passport Talent" visa. When the envisaged duration of the stay is less than or equal to twelve (12) months, a joint long-stay visa and permit to stay (VLS-TS) is issued for the duration of the envisaged stay. When the duration of the stay exceeds 12 months, a long stay visa and on arrival in France a residence permit are issued, according to the contract or the nature of the project.

Where the foreign national is already admitted to residence on French territory, the decision to issue the permit shall be taken by the prefect of his/her place of residence.

Renewal: The renewal must be requested within two months of the expiry of the VLS-TS or the residence permit. Renewal is subject to compliance with the initial conditions and certain additional conditions for the specific categories: business creator, innovative economic project holder, economic investor.

- The "European Blue Card Passport" (L313-20-2 °)

It is issued to foreign nationals who are in highly qualified employment for a period of one year or more and who have completed at least three years of higher education or have acquired an equivalent qualification through at least five years experience.

The wage provided for in the contract must be at least one and a half times the average annual reference wage. This amount is 53,836.50 Euros annually as of 1 November 2016.

- The "Talent Passport Employee on Assignment" (L313-20-3 °)

It is issued to an employee of a foreign affiliate being transferred to France. The conditions are as follows:

- An employment contract of more than three months with an employer established in France and a gross remuneration of at least equal to 1.8 times the SMIC.
- A seniority of at least three months with the group or the employer established outside France.

- The "Talent Passport Researcher" (L313-20-4 °)

This title is awarded to a foreign national holding a degree equivalent to a master's degree which requires research work or provides university-level education, under a hosting agreement signed with a public or private organization having a previously approved research or higher education scheme.

- The "Talent Passport Performing Artist" (L313-20-9 °)

For the above and this category (Talent Passport issued under 2 °, 3 °, 4 ° and 9 ° of Article L313-20), the duration of the residence permit corresponds to the duration of the employment contract.

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<sup>1</sup> « Passport » or « Passport Talent » refers to the new French immigration category and is not a passport in the usual sense of the word.

- “Passport talent Young Graduate Employee” or “Employee of an Innovative Company” (L313-20-1 °)
  - Issued to an employee who has obtained a Master's degree (or level I diploma certified by the *Conférence des grandes écoles*) holding a contract of employment of at least three months and a salary equal to at least twice the annual minimum wage .
  - It can also be issued under the same conditions of employment contract and salary when hired by an innovative company as defined in Article 44sexes 0A of the General Tax Code. The employee must participate in the research and development project of the company.
  - The duration of the card is identical to that of the employment contract.

- The “Creator of Business Passport” (L313-20-5 °)

It is issued to a foreign national under the following conditions:

- Diploma equivalent to the master's degree or any document showing at least five years' experience of a comparable level.
- Proof of sufficient resources during his/her stay to provide for himself/herself and, where appropriate, those of his/her family members.
- Proof of an investment of at least €30 000 in the project.
- Proof of compliance with the rules in force in the field of activity in question.

- The “Talent Passport Innovative Economic Project” (L313-20-6 °)

It is issued to a foreign national under the following conditions:

- Justify an innovative economic project.
- Show the recognition of his/her project by a public body.
- Proof of sufficient resources during his or her stay to provide for himself or herself and his family members, irrespective of the benefits and allowances mentioned in the third sentence of 2 ° of Article L. 314- 8.

- The « Talent Passport Mandataire Social » (L313-20-8 °)

It is issued to a foreign national under the following conditions:

- Hold the position of legal representative in an entity or a company doing business in France
- Have a seniority of at least three months as an employee or corporate officer in an entity or an affiliated company outside France.
- Receive a remuneration of at least three times SMIC.

The card is issued for a period corresponding to that of the functions performed within the limit of four years.

- The “Talent Passport Foreigner of International or National Fame” (L313-20-10 °)

Requirements:

- To be a foreigner whose national or international fame is established;
- Exercise in France an activity in a scientific, literary, artistic, intellectual, and educational or sports field for more than 3 months
- Show sufficient means of existence.

The duration of the title is determined by the nature, characteristics and duration of the project in France, up to a maximum of 4 years.

- The “Talent Passport Economic Investor” (L313-20-7 °)

- Show a project of direct economic investment in France.
- The applicant must personally or through a company which he/she manages or of which he/she holds at least 30% of the capital, invest or undertake to invest € 300,000 (tangible or intangible asset) and create or safeguard employment or, failing that, to commit to creating or safeguarding employment within the 4 years following the investment in France.

This direct economic investment of € 300,000 minimum is realized by:

- An investment in social capital.
- Reinvested earnings.
- Loans between affiliates.

On the other hand, indirect (passive) investment, also referred to as financial investment or portfolio, does not fall within the scope of this residence permit.

⇒ The multi-annual "ICT Secondee" residence permit (L313-24 I and II)

- The multi-annual residence permit referred to as an "ICT Secondee" may be issued to a foreign employee who is a third-country national seconded by his employer to an affiliate company in France and for the purpose of holding a senior management position or to provide expertise without a contract of employment with the host entity in France.

This involves the intra-group secondment (article L1262-1-2 ° of the Labor Code) in the framework of an assignment of senior management or contribution of expertise.

- The conditions required to benefit from the ICT secondment:

- 3 months of continuous seniority in the group at least,

- Intra-group secondment,

- Secondment for a senior management position or contribution of expertise

- Assignment of up to three years.

- No minimum pay threshold. The conditions of remuneration must be commensurate with the nature of the employment and it is necessary to show sufficient resources to meet his/her own needs and, where appropriate, those of his/her family members.

- When the envisaged duration of stay is less than or equal to 12 months, the foreign employee receives a VLS-TS labelled "ICT Secondee". When the envisaged duration of mission is more than 12 months, the foreign employee receives a long stay visa labeled "ICT Secondee" and on his/her arrival in France, a residence permit.

- The "ICT Secondee" residence permit allows intra-group assignments to be carried out in other member states of the European Union.

- Family members (spouse and minor children entering France) can receive the residence permit "ICT Seconde Family" which authorizes the stay and work in France. The duration of the card is aligned with that of the employee.

⇒ "ICT Mobile Secondee" card (L313-24- III and IV)

- The residence permit "ICT Mobile Secondee" is issued to the foreign employee holding an ICT residence permit issued by another member state of the European Union and who is assigned to France for more than 90 days as an intra-group transfer.

- The conditions for benefiting from the ICT mobile secondment status:

- Intra-group secondment

- Be already admitted to another European Union country as a seconded ICT employee.

- The employment conditions specific to the ICT secondment and the legal remuneration thresholds would apply.

- Show sufficient resources.

### **III - Procedures for the control and withdrawal of residence permits**

In return for teasing the process of issuing of residence permits, the authorities are setting up post-clearance verifications and have a wider right to information for the Prefects.

⇒ Obligation to provide information (L313-5-1)

- The beneficiary of a residence permit must inform the administration of any change in his/her situation. This results in three cases of potential refusal:
  - The foreign national ceases to fulfill the conditions for which he has obtained his residence permit.
  - The foreign national does not cooperate in the verification process.
  - The foreign national does not respond to the convocations.

▣ The administration's right to information (L611-12)

It can be used during the initial application, during the period of validity of the title in a random or targeted way and during the renewal.

- The Prefect may solicit other administrations or public or private bodies (administration, social security, higher education institutions, energy providers, financial institutions, registers of commercial courts, etc.) in order to verify the accuracy of the information provided by the applicant for the residence permit.
- The Prefect may verify the authenticity of the documents and have the information or documents sent to them when in the framework of a residence permit application.
- Confidentiality may not be a ground to refuse the requests for information from the Prefect.
- This prefect's verification may not be a systematic annual check. Rather, it would be random and targeted. Two verification phases can be distinguished:
  - During the first year of application for multi-annual residence permits (1 November 2016 to 1 November 2017): a random and targeted monitoring phase, which would make it possible to draw the first conclusions from the implementation of the new procedures.
  - A second phase from 1 November 2017 on the basis of the results obtained during the first control phase.

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